ber, 1824, died; that afterwards, at June Term, 1825, of the Court of Appeals, the judgment of the County Court was affirmed; and that a part of the judgment so affirmed had been satisfied by Walker, who had since become totally insolvent. There has been here therefore not only a considerable lapse of time since the rendition of the judgment by the County Court, but an abatement by the death of Booth since the judgment was rendered.

But it has been declared, that no case in the Court of Appeals,
328 * under a rule argument, should abate by the death of either of the parties; and that the Court might give judgment as if the party were alive; and the judgment should have the same effect as if it had been rendered in favor of, or against the deceased. 1806, ch. 90, s. 11; 1815, ch. 149, s. 5 and 6; *Green* v. *Watkins*, 6 *Wheat.* 261. According to this law, the lien commencing with the judgment of the County Court was stayed, suspended and continued by the appeal; and must be considered as having been finally affirmed by the judgment of the Court of Appeals in favor of Stone & McWilliams against Jeremiah Booth, as of June, 1825. *Bac. Abr. tit. Abatement, F; Penoyer* v. *Brace*, 1 *Ld. Raym.* 244. As the case could not abate after it had reached the Court of Appeals and had been there placed under a rule argument, the plaintiffs could not have been expected or required to revive their judgment until after the Court of Appeals had pronounced its decision. But after that, although the lien then subsisted in full force; because there could then be no laches imputed to the plaintiffs, nor then any presumption that their judgment had been satisfied; *Garnon's Case*, 5 *Co.* 88; *Howard* v. *Pitt, Carth.* 236; *S. C.* 1 *Show.* 402; yet no execution at law could have been sued out against the representatives of Booth until the plaintiffs had made them parties to their judgment; which, it seems, has not yet been done.

It is clear, that, since the passage of the act enlarging the time for suing out executions on judgments, 1823, ch. 194; there could be no presumption, that this judgment of Stone & McWilliams had been satisfied until after the lapse of three years from June, 1825, when it was affirmed by the Court of Appeals; and consequently, their lien remained in full force in March, 1828, when they filed their petition in this case. That petition must, at least in equity, be considered as in all respects equivalent to the suing out of a *scire facias* to revive the judgment against the representatives of Booth; and to entitle them to the full benefit of their lien so as to give them a preference in satisfaction; since, under all the circumstances of the case, it would have been utterly nugatory to have proceeded at law, or to have attempted to obtain satisfaction of their claim in any other way. *Robinson* v. *Tonge*, 3 *P. Will.* 398; *Burroughs* v. *Elton*, 11 *Ves.* 36. It is then clear that